

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN,
APPROVING IN PART, CONCURRING IN PART, DISSENTING IN PART**

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-139; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190*

I have long believed that the Commission has a responsibility to collect accurate and reliable data in order to develop effective policies and fulfill Congress's goals for the evolving telecommunications marketplace. Just as an airplane pilot would not land a plane with eyes closed and instruments off, the Commission must ensure that its decision-making is guided by sufficient data. Particularly as telecommunications markets move to a less regulated model, the FCC can also play an important role by providing information directly to consumers that will empower them to choose among competitive carriers.

With so many benefits from the Commission's efforts to collect and share market information, we should be skeptical about proposals to effectively jettison a host of reporting requirements that may help the Commission perform its consumer protection, broadband, competition, and public safety functions. It is certainly true that we must update our rules to respond to changes in the market and technology, as we are required to do regularly by statute. Unfortunately, today's item fails to carefully analyze the current collection program or develop consensus about which of these service quality, customer satisfaction, infrastructure, and operating reporting requirements remain useful, or could be revised, eliminated, or enhanced. Perhaps more troubling, the majority, on the last business day of this fifteen month review process, has taken up entirely new forbearance requests which will cast aside long-standing financial reporting requirements.

To be clear, the prudent course would be to have addressed these reporting requirements with a careful analysis and through an open and inclusive rulemaking proceeding. Yet, we are presented today with a Hobson's choice in the form of a forbearance statute that mandates a "deemed grant" – in this case total elimination of the reporting requirements – if the Commission is unable to reach compromise. Faced with these difficult circumstances, I have attempted to work with my colleagues to forge consensus where possible, with the result that I will approve-in-part, concur-in-part, and dissent-in-part to portions of this item, as described below.

Service Quality, Customer Satisfaction, Infrastructure and Operational Reporting Requirements. With respect to this data, we strike a compromise which, though imperfect, is certainly preferable to a wholesale scrapping of these reporting requirements. State public utility commissions, consumer

advocates, providers, and representatives of communications workers alike have stressed the utility of this data and have urged the Commission to take a more calibrated approach. So, I appreciate my colleagues' willingness to accommodate my desire to explore these issues more fully. Indeed, my support for this item was dependent on the Commission's decision to condition forbearance on the reporting carriers' commitment to continue this data collection for two years, while the Commission considers whether to modify these rules and apply them to a broader class of carriers. Specifically, the Order requires the reporting carriers continue filing this data for two additional years and to continue to publicly report the service quality and customer satisfaction data during this time. These conditions are essential for my support of this item, though I can only concur to the portions of this Order that rely on flawed analysis to conclude that forbearance is appropriate at all.

My support for this item was also dependent on the Commission's decision to open a Notice of Proposed Rulemaking which recognizes that this information may be useful to the Commission and consumers, particularly if collected from a broader range of providers. Notably, eight years ago, the Commission proposed to do exactly that – to revise, pare back, and in some cases, enhance many of these same reporting requirements. Certainly, eight years should have been sufficient time to have addressed this in an ordered fashion. At a minimum, having had fifteen months warning that we would have to address this by today, it is disappointing that the Commission failed to pursue a thoughtful and comprehensive rulemaking process.

Now, faced with this imminent deadline, the Commission pivots to this awkward two step process – forbearing from these reporting requirements, while at the same time seeking comment on whether those same requirements should be applied to all carriers. While this is certainly putting the cart before horse, this compromise is far better than immediate and precipitous elimination of all of the rules. It will give the Commission another opportunity to foster a collaborative approach, to engage State commissions, consumer advocates, carriers, and other interested parties, to narrow the differences, and perhaps to develop consensus. Now that we have this brief window of opportunity, I hope and expect that the Commission and outside parties will engage constructively and creatively in an effort to derive meaningful reporting requirements to be filed by a broader set of industry players that will assist policymakers and consumers. To that end, I'd like to acknowledge the efforts of AT&T and the Communications Workers of America to develop commitments that form the basis of this Order. That should be an encouraging sign as we move on to the next phase of this proceeding.

Financial Reporting Requirements. In a surprise conclusion to this proceeding, the Commission also grants two additional forbearance requests from our financial reporting requirements. Adding these new sections of the Order on the last business day cuts short outside parties' opportunity to make their views heard and denies all Commissioners the opportunity to gain the benefit of this input. This cavalier approach to the forbearance process is disappointing given the many concerns that have already been raised by Congress.

Even setting those concerns aside, elimination of these cost assignment and allocation rules undermines the Commission's ability to promote competition, consumer confidence, investor security, and the public interest, as Commissioner Copps and I detailed in our joint statement earlier this year.¹ It

¹ See Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein, Dissenting, *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342; Memorandum Opinion and Order (April 24, 2008).

diminishes our ability to meet our statutory obligation to ensure that telecommunications services are offered on rates, terms and conditions that are just, reasonable and not unjustly or unreasonably discriminatory. It renders meaningless important competitive safeguards that the Commission unanimously adopted just a year ago. Moreover, it will make harder the road to comprehensive universal service and intercarrier compensation reform. For all these reasons, I dissent from this portion of the item.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-139; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190*

An integral part of the pro-competitive, de-regulatory national policy framework established by Congress in the 1996 Act is the section 10 forbearance provision. Today's increasingly competitive telecommunications marketplace, including cross platform competitors like wireless and cable, provide consumers with an array of choices that ensure the consumer protection once deemed necessary through government regulation. When the Commission finds that certain filings are no longer needed to fulfill their consumer protection goals, we should grant relief accordingly. That is the case today, as we grant partial forbearance from carriers' obligation to file certain Automated Reporting Management Information System (ARMIS) "service quality and infrastructure" reports and extend relief from cost assignment rules previously granted to AT&T to Verizon and Qwest.

The ARMIS reports, created in the Commission's *Price Cap Order* nearly two decades ago, were intended to serve as "safety nets" to ensure that incumbent local exchange carriers did not lower quality of customer service to increase short-term profit or fail to invest in infrastructure under the new regulatory framework. With the advent of competition in the telecommunications marketplace the opposite has happened, with industry offering a myriad of options to the consumer, investing approximately \$68 billion in the marketplace just last year. The majority of these reports, adopted to monitor whatever "theoretical concern" there may have been, are no longer needed to fulfill their goals of consumer protection.

As a former state commissioner, I appreciate the participation of my state colleagues in this proceeding and have carefully considered their concerns. I highlight the fact that we do not preempt any state authority in this order. We clearly acknowledge and in essence bolster the consumer protection authority of the states to obtain any information from any of these carriers for their own regulatory purposes. States have always taken the lead in protecting the consumer interest and have overarching statutory authority that goes far beyond keeping data reports.

This forbearance is a reasoned approach which both grants and denies forbearance, based on specific circumstances. Thus, we find that there is still a federal need for the collection of switched access line data used by USAC to calculate growth in access lines as part of the formula for determining

interstate access support, and business line count information in the non-impairment thresholds for the Commission's unbundling rules.

As Federal Chairman of the Federal-State Joint Board on Advanced Services, I commend the Chairman for recognizing the importance of maintaining certain data that could be helpful in future policymaking considerations regarding public safety and broadband deployment.

As we all work together toward ensuring that every person in this country has broadband access, from the broadband mapping legislation proposed by Chairmen Inouye and Markey to the proceedings at the FCC, to local and state initiatives such as Connect Tennessee, it is important to ensure that we retain data that will help us achieve those goals. However, I find it inconsistent that in this order that we on one hand grant forbearance relief to a specific class of carriers and on the other hand we potentially open the door to further regulation on a broad, industry-wide basis. Undoubtedly, broadband and public safety are crucial public policy goals that may indeed require more information than is currently collected. But if we are going to impose reporting requirements on carriers involved in our public safety infrastructure and deployment of broadband we need make sure that they are treated fairly and equitably, with the data collection being as minimally burdensome and least duplicative as possible, focusing on the enunciated goals of today, not the legacy requirements of yesterday.

I agree that as competition increases in the marketplace, we should level the playing field whenever possible whether within or across platforms. However, the entire reasoning on which this order is based on -- lifting regulations that are "no longer necessary" -- is not consistent with the potential "expansion" to other providers and platforms. I hope that we will continue to pursue the data necessary for our policy goals where it makes sense, especially utilizing data which may already be provided either to other governmental entities and non-profits (such as Connected Nation), and to encourage industry-based reporting parameters in keeping with our deregulatory policies to encourage investment and deployment of services and more choice for consumers.

In this order we also grant identical cost allocation relief to Verizon and Qwest that we provided to AT&T earlier this year. Like AT&T, these companies are now largely regulated under price caps, and there is no current federal need for the specific cost assignment rules implemented under rate of return regulation. By granting this forbearance, we are leveling the regulatory playing field and ensuring continued competition among these carriers. As a condition of this forbearance, we require Verizon and Qwest to file a compliance plan, as was the case with AT&T, to ensure that the Commission has any accounting data it needs for policymaking purposes moving forward.

While I agree philosophically that we should treat like "classes of carriers" in the same manner, I would have chosen another legal vehicle. Additionally, rather than granting forbearance first and then approving a compliance plan, perhaps it would be more logically sound if the Commission had all the relevant information -- including the compliance plan -- prior to making the decision to expand relief. However, in the interest of ensuring that we are enabling competition in the marketplace by reducing the legacy barriers that unfairly burden some carriers and not others, I agree with the outcome, and hope the forthcoming compliance plan will indeed continue to protect consumers in markets and situations where necessary. Ultimately, it is our responsibility to ensure regulatory parity so that "similarly situated" classes of carriers are treated equally under the law.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-139; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190

I support AT&T's request for relief from the requirement to file ARMIS service quality and infrastructure reports in this forbearance petition and the extension of such relief to similarly situated carriers that have also requested such relief. As set forth in the order, these reports, which are filed by only a small group of carriers, no longer advance the consumer protection goals for which they were originally adopted. With this order, we are able to maintain effective consumer safeguards while also cleaning out unnecessary regulatory underbrush. Accordingly, I find that granting relief meets the statutory obligations of Section 10 and, therefore, is in the public interest.

I also am pleased that this item extends to Verizon and Qwest the relief the Commission previously afforded to AT&T eliminating certain cost allocation data collection and reporting requirements. As I said at that time, it is important to grant comparable relief to similarly situated carriers, and to do so as soon as possible.

Even after this limited forbearance order, the Commission can still gather information necessary to build a sufficient record for a legitimate regulatory purpose. For example, we appropriately deny forbearance with respect to business line count information used in the non-impairment thresholds for the Commission's unbundling rules. Further, some of the data currently provided in the ARMIS reports – if collected from a broader set of providers – could inform our decision-making with respect to public safety, broadband deployment, and perhaps other key issues. I therefore look forward to reviewing the responses to the Notice of Proposed Rulemaking asking whether and how the Commission should collect data from a broader cross-section of the industry. The fact that the relief in this order is conditioned on carriers continuing to publicly file ARMIS report data for two years will, to the extent we conclude that the collection of such data by the Commission is necessary and proper, ensure continuity.